

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 15,154

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Appeal of)

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying him coverage for two pair of eyeglasses under the Medicaid program.

FINDINGS OF FACT

1. The petitioner is a Medicaid recipient who had a knee replacement operation in January of 1997 due to severe arthritis. Because of this operation he is concerned about losing his balance and possibly reinjuring himself.
2. The petitioner wears glasses to correct his vision for which he has two prescriptions, one for distance viewing and one for reading. After discussing the matter with his physician, the petitioner decided to order two pair of glasses (one for each prescription) rather than one pair of glasses with combined bifocal lenses for each prescription. The petitioner was concerned that the bifocals are visually confusing and that it would be difficult for him to keep his balance walking with those glasses. The petitioner did actually order and now possesses both pairs of glasses although payment for them has still to be decided.
3. The petitioner requested payment for both pairs of eyeglasses through Medicaid. In support of his request he submitted the following letter from his ophthalmologist:

I recently performed an eye examination on the above patient on 7/25/97. During the examination, it was determined that [petitioner] needs corrective lenses of differing prescriptions for distance and near viewing. [Petitioner] recently had a knee replacement surgery and is concerned about possible balance problems and falling while walking with bifocals. He asked that I write to you to get approval for two separate pairs of glasses, one with the distance correction, the other with the near correction, rather than bifocals, to avoid these balance problems. Given that many new bifocal wearers do experience difficulty with balance while adapting to bifocals, I feel that his concerns are valid.
4. The petitioner's request was denied on August 22, 1997 because "Medicaid policy limits coverage to 1 pair of eyeglasses every two years." The petitioner subsequently called the Medicaid division and was

told by the reviewer that he could order one pair of eyeglasses and they would be paid for, but not two. When he told the reviewer that he already had the two pair of eyeglasses but did not know how to pay for them, she suggested that he file an appeal.

ORDER

The decision of the Department is upheld.

REASONS

Unlike many provisions in the Medicaid regulations, that involving the number of eyeglasses which will be provided to recipients is clearly spelled out:

Eyeglasses (frames and lenses) and repairs and replacements are covered under the terms of a sole source contract with the Department of Social Welfare. Coverage is limited to one pair of eyeglasses every two years per recipient.

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The regulations express no further exceptions to this rule. The petitioner may have made a compelling argument that there should be an exception to this policy but he has made no argument that such an exception is legally required.⁽¹⁾ Without the latter, the Board cannot require the Department to make an exception to its rules. The Board cannot rewrite the rule itself to grant an exception merely because it disagrees with the Department. See 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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1. Under 42 C.F.R. § 440.120(d) of the federal Medicaid regulations, eyeglasses are an optional service which can be provided by a State. Limitations on the scope of optional services can be put in place for fiscal reasons as long as these limitations do not restrict the service based on medical condition and their scope is reasonably sufficient to meet the objective.